ATHMALINGAM PALANEYVELOO

v.

MENTERI SUMBER MANUSIA

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[APPLICATION NO: R1-25-68-99]
27 OCTOBER 2001

ADMINISTRATIVE LAW: *Exercise of administrative powers - Decision of minister not to refer representations to Industrial court - Application for certiorari - Whether properly made - Whether application for judicial review of decision-making process framed as an appeal against merits of decision - Whether High Court can entertain such an 'appeal' - Whether decision-making process of minister shown to be flawed*

ADMINISTRATIVE LAW: *Remedies - Certiorari - Application for - Whether merely an application for judicial review of decision-making process - Whether an appeal against merits of decision - Whether High Court hearing certiorari application sits in supervisory or appellate jurisdiction*

LABOUR LAW: *Employment - Dismissal - Decision of minister not to refer representations to Industrial court - Application for certiorari - Whether properly made - Whether application for judicial review of decision-making process framed as an appeal against merits of decision - Whether High Court can entertain such an 'appeal' - Whether decision-making process of minister shown to be flawed*

Pursuant to a domestic inquiry which found him guilty of misconduct (striking a superior officer), the applicant's services with the company were terminated. The applicant then made representations (for reinstatement) to the Director General of Industrial Relations but the matter remained unresolved and had to be referred to the Minister of Human Resources ('the Minister'). The instant application by the applicant was for leave "to appeal against the decision of the Minister" not to refer the applicant's representations to the Industrial Court.

Held:

[1] An application for a writ of *certiorari* is an application for judicial review; it is not an appeal against the decision of the decision-maker. In hearing an application for *certiorari* the High Court does not sit as an appeals court; it sits in its supervisory jurisdiction, not its appellate jurisdiction. (p 539 b-f)

[2] From the prayers and affidavits thereof, the application did not appear to be one for judicial review of the Minister's said decision but rather an appeal against the decision itself. The grounds for the application were akin to grounds of appeal and they were also made on the speculative basis that the applicant believed that the Minister did not take into account relevant matters in coming to his decision. There was nothing to show that there was an arguable case that the Minister, in exercising his discretion not to refer the matter to the Industrial Court, had acted *ultra vires*, unfairly or unjustly and that there was a flaw in his decision-making process. (pp 539 a & 540 g-i)

[Motion for certiorari dismissed.]

Case(s) referred to:
Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor [1998] 1 CLJ 227 ***(foll)***
Re Amin [1983] 2 AC 818 ***(foll)***

For the applicant - Thenmathy Ramasamy; M/s Khoo Chye Beng & Assoc
For the respondent - Narimah Yusoff FC

Reported by Gan Peng Chiang

JUDGMENT

KC Vohrah J:
I dismissed the application of the applicant for leave "to appeal against the decision of the Minister of Human Resources" made on 17 July 1998 where he declined to refer to the Industrial Court the representations of the applicant to be re-instated to his former job at Carrier International.

Let me set out what the applicant prayed for:

(b) Pemohon diberikan kebenaran membuat rayuan terhadap keputusan Menteri Sumber Manusia dalam kes rayuan balik bekerja di bawah seksyen 20(3) Akta Perhubungan Perusahaan 1967 serta mendapat suatu perintah *certiorari* mengkaji semula keputusan Responden dan seterusnya merujuk kes tersebut kepada Mahkamah Perusahaan;

(b) The Applicant to be given leave to appeal against the decision of the Minister of Human Resources in an appeal to be re-instated in his job order s. 20(3) of the Industrial Relations Act 1967 and for an order of *certiorari* for him to review his decision of the Respondent and refer the matter to the Industrial Court.

What appears from the prayer above is that the applicant is appealing against the decision of the Minister and that it is not an application for a judicial review of his decision.

There is a misconception of the law. A *certiorari* application is an application for judicial review and is not an appeal against the decision of the decision maker and in a *certiorari* application the High Court does not sit as an appeal court. In *Re Amin* [1983] 2 AC 818 at 829, Lord Fraser observed:

> Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made ... Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer.

The Court of Appeal in *Michael Lee Fook Wah v. Menteri Sumber Tenaga Manusia, Malaysia & Anor* [1998] 1 CLJ 227 at 232 has reminded us of the same principle in the following words of Shaik Daud JCA:

> First and foremost it must be emphasised that in an application for *certiorari*, the High Court is not sitting in its appellate jurisdiction but in its supervisory jurisdiction. The court is more concerned with the decision-making process and not on the decision itself The court should not readily question the administrative decision of the 1st respondent as that is his absolute discretion. If the 1st respondent had acted *ultra vires*, unfairly or unjustly in exercising his discretion, then it is the duty of the courts to interfere in an application for review of that decision. The underlying principles of judicial review have been stated in a number of cases, and it is the exercise by those with whom discretionary power is vested, not in the courts, that the courts are required to review.

In his affidavit the applicant complained that he had found that one Charles had erased his signature on a record for overtime which he had put in on 15 May 1997. On 17 May 1997 a quarrel ensued between him and Charles.

Charles threw an iron rod at him and he threw a light one at him. Then Charles bit his finger.

On 19 May 1997 the applicant was suspended from work until a domestic inquiry was held on 29 May 1997. When he wanted to give an explanation to the Manager of Human Resources the manager refused to accept it and told him to attend the domestic inquiry. He was issued a notice to attend the domestic inquiry.

The domestic inquiry, the applicant avers, did not at all give weight to his evidence nor to his medical report nor to his police report and never asked Charles for his police report or his medical report.

The domestic inquiry found that the applicant was guilty of hitting Leading Hand Charles. On 30 May 1997 the company in a letter to the applicant terminated the services of the applicant with effect from 2 June 1997.

Upon his representations to the Director General to be re-instated to the company in his previous job which had not been settled the matter was referred to the Minister.

On 17 July 1998 the Minister declined to refer the matter to the Industrial Court on the grounds, firstly, that his services had been terminated after a domestic inquiry had found him guilty of a serious charge of hitting a leading hand in the factory area and this was witnessed by a worker, and secondly, the applicant had brought a paper rod from his place of work to the place of work of the Leading Hand Charles.

A great part of the applicant's affidavit attacks the domestic inquiry for not being fair, that it did not do a proper job of evaluating the evidence before it and of ignoring his evidence, his police report and his medical report.

As for the relief he seeks against the Minister he says that because he believed that the Minister had failed to analyse or weigh the notes of proceedings of the domestic inquiry, had failed to consider that the procedure adopted by the domestic inquiry was prejudicial to him and that the Minister only took into account that the representations were not settled but did not consider the decision of the domestic inquiry was unfair, his decision was not reasonable and cannot be accepted.

It will be noted that the grounds are more like grounds of appeal against the decision of a magistrate's and these too on a speculative basis that he believed the Minister did not take into account certain matters in coming to his decision. There was nothing to show that there is an arguable case that the Minister, in exercising his discretion not to refer the matter to the Industrial Court, had acted *ultra vires*, unfairly or unjustly and that there was a flaw in his decision making process. Not only did prayer (b) in the motion state that the application was an appeal against the decision of the Minister, what was shown in the affidavit was indeed that the applicant treated the application as an appeal against the decision of the Minister. This court is not empowered to act as an appeal court and the court therefore dismissed the motion for *certiorari*.